Long Term Disciplinary Procedures for Students with Disabilities

LEA Disciplinary Policy

Consistent with the requirements of Part B of the IDEA, the Utah Special Education Rules Section V requires each LEA (local education agency) to establish, maintain, and implement policies and procedures for disciplining students with disabilities. If the LEA fails to implement policies consistent with requirements of the IDEA and Utah Rules for Special Education and inappropriately expels a student with disabilities, the LEA will be in violation of both the IDEA and Utah Rules for Special Education, which may constitute a denial of FAPE.

LEAs should carefully read Section V of the Utah Rules of Special Education to be sure that the requirements set forth are thoroughly understood. Generally, irrespective of violation, unless the student is removed from the LEA by another agency (such as law enforcement or DCFS) to another location that requires services be provided by another LEA or state agency, the LEA will be responsible to ensure that the student receives a free appropriate public education (FAPE) under the IDEA. Any questions should be addressed to the USOE State and Federal Compliance Officer or the USOE Technical Assistant for the LEA for guidance.

Utah Rules of Special Education Section V. (Discipline Procedures) (B)(1) authorizes school personnel to consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student with a disability who violates a code of student conduct. Failure to follow all other requirements of this section may result in a denial of FAPE and corrective action if a formal state complaint or due process hearing were filed.

School Removals for 10 Days or Less

Utah Rules for Special Education Section V(B) authorizes school personnel to remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension for not more than ten consecutive school days as long as those removals do not constitute a change of placement. This is often referred to as the ten (10) day rule.

<u>School Removals of More than 10 Days (Requires Special Education Services and a Manifestation Determination)</u>

After a student with disabilities has been removed from their current placement for ten days in the same school year, during any subsequent days of removal, the LEA must provide services to the student. When the ten day rule has been exhausted, prior to any further removals that would constitute a "change of placement", the LEA must complete a manifestation determination to determine whether the violation is a manifestation of the student's disability.

If the team determines that the violation is <u>not</u> a manifestation of the student's disability, the school may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, <u>except after the tenth day of removal that constitutes a change in placement</u>, the LEA must provide services to the student.

Properly applied, if the LEA determined that the violation was not a manifestation of the student's disability, they could change the student's placement but would be obligated to continue to provide educational services. Section V.C. of the Utah Rules for Special Education clearly states that a student with a disability who is removed from his or her current placement must continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Written Prior Notice and Procedural Safeguards

Written prior notice and procedural safeguards notice must be given to the parents of a student with a disability a reasonable time before the LEA proposes any change of placement. Utah Rules of Special Education.

Manifestation Determination

The LEA must conduct an appropriate manifestation determination. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of conduct, the LEA, the parent, and relevant members of the student's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine whether 1) if the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or 2) if the conduct in question was the direct result of the LEA's failure to implement the IEP. *Utah Rules for Special Education V.E.*

Special Circumstances (Weapons, Drugs, or Serious Bodily Injury)

Students with disabilities can be removed to an IAES for up to 45 school days. It would be the LEA's responsibility to provide the IAES and the special education services during the 45 day time period.

For additional IDEA disciplinary questions, please contact Lisa Arbogast at lisa.arbogast@schools.utah.gov